IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.Rev.Pet.No. 2793 of 2007(Y)

CRA.315/2005 of ADDL.DISTRICT AND SESSIONS JUDGE (ADHOC)FAST TRACK COURT NO. II

CC.576/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

K.V.VISWANATHAN,KULATHINKAL HOUSE,
MANNERA MURI, THANNITHODU VILLAGE.

BY ADV. SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON

RESPONDENTS: STATE/COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
THANNITHODU POLICE STATION-THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. 2793 of 2007

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Dated, this the 25th day of July 2007

ORDER

The revision petitioner who was the accused in C.C. 576/2003 on the file of the J.F.C.M-II, Pathanamthitta challenges the conviction entered and the sentence passed concurrently against him for an offence punishable under Section 248 (2) Cr.P.C. For the said conviction, he was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 5,000/- and on default to pay the fine to suffer simple imprisonment for three months with a further direction that the fine amount as and when realised shall be paid to P.W.1 the injured as compensation under Section 357 (1) Cr.P.C.

2. P.W.1 is the de facto complainant was assaulted by the revision petitioner with a chisel sustaining injuries to his chest, left arm and both thighs. The other occurrence witnesses are P.W.2 his wife and P.W.3 his neighbour. Eventhough the learned counsel for the revision petitioner assailed the conviction entered and the sentence passed against the revision petitioner the conviction has been recorded by the courts below, after an appreciation of the oral and documentary evidence in the case. While sitting in the rarefied jurisdiction, this

Court will loathe to interfere with the said findings unless it suffers from grave irregularity or unless the appreciation of evidence by the courts below has been faulty. I am, therefore, not inclined to interfere with the conviction recorded against the petitioner.

3. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. Pursuant to the sentence imposed by the courts below, petitioner has been in custody from 11-7-2007 onwards. This is a case in which on the facts and circumstances of the case, the revision petitioner does not deserve penal servitude by way of incarceration. I am of the view that interest of justice will be adequately met by issuing appropriate direction for compensation and by directing that the imprisonment already undergone by the revision petitioner shall suffice. Accordingly, the sentence imposed on the revision petitioner is set aside and instead it is declared that the imprisonment already undergone by him shall suffice besides the direction to be hereinafter issued regarding compensation.

> "The revision petitioner shall pay a sum of Rs. 15,000/- (Rupees fifteen thousand to P.W.1, the injured by way of compensation under Section 357 (3) Cr.P.C. within a period of 45 days from today failing

which he shall suffer simple imprisonment for three months by way of default sentence".

In the result, this petition is disposed of confirming the conviction entered and modifying the sentence imposed of the trial court.

V. RAMKUMAR,
(JUDGE)

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